

Enrolled Senate Bill 326

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CHAPTER

AN ACT

Relating to cannabis; creating new provisions; amending ORS 133.619, 133.726, 165.663, 475C.337, 475C.341, 475C.349, 475C.353, 536.900 and 537.990 and section 45, chapter 542, Oregon Laws 2021; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Section 2 of this 2023 Act is added to and made a part of ORS 475C.005 to 475C.525.

SECTION 2. (1) As used in this section:

(a) "Cleanup" means the removal, disposal and remediation, by an owner or an agent of an owner, of waste from a site in conformance with applicable law.

(b) "Cleanup costs" means reasonable costs that are associated with or attributable to cleanup.

(c) "Law enforcement agency" has the meaning given that term in ORS 181A.010.

(d)(A) "Owner" means a person who owns the real property where a site is located.

(B) "Owner" does not include a person who, without participating in the management of the site, holds indicia of ownership primarily to protect a security interest in the real property.

(e) "Site" means the location where the unlawful manufacture of a marijuana item, as described in ORS 475C.349, or the unlawful production of marijuana, as described in section 41, chapter 542, Oregon Laws 2021, occurred or is alleged to have occurred.

(f) "Waste" means:

(A) Marijuana flowers, marijuana leaves, marijuana plants and any parts of marijuana plants;

(B) Any items or materials used for an irrigation system if used to facilitate the unlawful manufacture of marijuana items or unlawful production of marijuana, unless:

(i) The site where the items or materials are located was leased to a third party that was responsible for the unlawful manufacture of marijuana items or unlawful production of marijuana;

(ii) The items or materials are the property of the owner; and

(iii) The owner elects to retain ownership and properly store the items or materials;

(C) Greenhouses, hoop houses and other structures used to facilitate the unlawful manufacture of marijuana items or unlawful production of marijuana, unless:

(i) The site where the greenhouses, hoop houses or other structures are located was leased to a third party that was responsible for the unlawful manufacture of marijuana items or unlawful production of marijuana;

(ii) The greenhouses, hoop houses or other structures are the property of the owner and are agricultural buildings, as defined in ORS 455.315, that are allowed on the real property; and

(iii) The owner elects to retain ownership and properly care for the greenhouses, hoop houses or other structures; and

(D) Any material or substance designated as chemical by the Environmental Quality Commission under ORS 475.425 used to facilitate the unlawful manufacture of marijuana items or unlawful production of marijuana, unless:

(i) The site where the material or substance is located was leased to a third party that was responsible for the unlawful manufacture of marijuana items or unlawful production of marijuana;

(ii) The material or substance is the property of the owner; and

(iii) The owner elects to retain ownership and properly store the material or substance.

(2) Upon receiving written notification from a law enforcement agency that a site contains waste, the owner shall promptly undertake any cleanup of the site. The owner may contract with a third party for all or part of the cleanup.

(3) It is a public nuisance, which may be abated pursuant to subsection (4) of this section, if the owner of a site described in subsection (2) of this section fails to complete cleanup of the site within 30 days of the date on which the owner receives the notification described in subsection (2) of this section.

(4) In order to abate a public nuisance described in subsection (3) of this section, the city or county that has jurisdiction over the real property where a site described in subsection (2) of this section is located may maintain civil proceedings in courts of this state against the owner described in subsection (3) of this section to:

(a) Enforce the requirements of subsection (2) of this section;

(b) Authorize the city or county to conduct cleanup and subject the real property where the site is located to a lien for cleanup costs; and

(c) Enjoin any further violation of ORS 475C.349 or section 41, chapter 542, Oregon Laws 2021.

(5) A court may allow the prevailing party reasonable attorney fees and expenses in a proceeding described in subsection (4) of this section.

(6)(a) The remedies described in subsection (4) of this section are in addition to any other remedies available to the governing body of a city or county that has jurisdiction over the real property where a site is located.

(b) Nothing in this section requires the governing body of a city or county to avail itself of a remedy allowed by this section or by any other law.

(7)(a) The governing body of a city or county described in subsection (4) of this section may, at its discretion, file a claim of lien on real property where a site described in subsection (2) of this section is located. The governing body of the city or county shall file written notice of claim of lien with the recording officer of each county in which the real property where a site described in subsection (2) of this section is located. All cleanup costs incurred by the city or county under subsection (4)(b) of this section shall constitute the lien. The lien must contain the name of the owner of the real property to which the lien is attached and a description of the real property sufficient to accurately identify the real property. The lien shall attach and become enforceable on the day of the filing described in this subsection.

(b) A lien described in this subsection shall be foreclosed in the manner provided in ORS chapter 88.

(c) A lien described in this subsection shall have priority over any claim of the state under ORS 166.715 to 166.735 or any local government forfeiture ordinance or regulation.

(8) Nothing in this section shall affect the right of the governing body of a city or county to bring an action against any person to recover all costs and damages for which the person is liable under this section.

SECTION 3. (1) At a location described in subsection (2) of this section, a person may not:

(a) Use, store or divert any waters under ORS 537.130;

(b) Use or attempt to use any ground water under ORS 537.535;

(c) Construct or attempt to construct any well or other means of developing and securing ground water under ORS 537.535;

(d) Collect or use precipitation water from an artificial impervious surface as described in ORS 537.141; or

(e) Use ground water as described in ORS 537.545 (1)(b) or (f).

(2) A person may not engage in or undertake an action described in subsection (1) of this section at a location where plants in the plant Cannabis family Cannabaceae are grown, if:

(a) The location described in this section is not licensed or registered under ORS 475C.065, 475C.792 or 571.281; and

(b) The number of plants described in this section is greater than the number of marijuana plants or industrial hemp plants allowed under ORS 475C.005 to 475C.525, 475C.770 to 475C.919 or 571.260 to 571.348.

SECTION 4. ORS 133.619 is amended to read:

133.619. (1) A warrant authorizing the installation or tracking of a mobile tracking device shall be executed as provided in this section.

(2) The officer need not inform any person of the existence or content of the warrant prior to its execution.

(3) Except as provided in subsection (4) of this section, the officer need not deliver or leave a receipt for things seized or observations made under authority of the warrant.

(4) Within five days of the execution of the warrant, or, in the case of an ongoing investigation, within such additional time as the issuing judge may allow upon application, the officer shall mail a receipt for things seized or observations made under authority of the warrant to the following:

(a) If the mobile tracking device has been affixed to a vehicle, to the registered owner; and

(b) To such other persons as the court may direct in the warrant.

(5) The receipt provided for in subsection (4) of this section must include the dates and times during which the officer monitored or attempted to monitor the mobile tracking device.

(6) A warrant authorizing the installation or tracking of a mobile tracking device shall be issued only when based upon the submission of an affidavit or oral statement as described in ORS 133.545, which affidavit or statement demonstrates that probable cause exists to believe that an individual is committing or is about to commit:

(a) A particular felony of murder, kidnapping, arson, robbery or other crime dangerous to life and punishable as a felony;

(b) A crime punishable as a felony arising under ORS 475.752 [or], 475.806 to 475.894, **475C.005 to 475C.525 or 475C.770 to 475C.919**;

(c) The crime of unlawfully transporting metal property under ORS 164.857 or a crime described in ORS 165.118;

(d) Bribery, extortion, burglary or unauthorized use of a motor vehicle punishable as a felony;

(e) A violation of a criminal provision of the wildlife laws as described in ORS 496.002;

(f) A violation of a criminal provision of the commercial fishing laws as described in ORS 506.001;

(g) A violation of ORS 704.020, 704.021, 704.030 or 704.065; or

(h) A conspiracy to commit a crime listed in this subsection.

(7) A court may authorize the installation or tracking of a mobile tracking device for a period not to exceed 30 days. Upon application, the court may grant one or more extensions for a period not to exceed 30 days per extension.

SECTION 5. ORS 133.726 is amended to read:

133.726. (1) Notwithstanding ORS 133.724, under the circumstances described in this section, a law enforcement officer is authorized to intercept an oral communication to which the officer or a person under the direct supervision of the officer is a party, without obtaining an order for the interception of a wire, electronic or oral communication under ORS 133.724.

(2) For purposes of this section and ORS 133.736, a person is a party to an oral communication if the oral communication is made in the person's immediate presence and is audible to the person regardless of whether the communication is specifically directed to the person.

(3) An ex parte order for intercepting an oral communication in any county of this state under this section may be issued by any judge as defined in ORS 133.525 upon written application made upon oath or affirmation of the district attorney or a deputy district attorney authorized by the district attorney for the county in which the order is sought or upon the oath or affirmation of any peace officer as defined in ORS 133.005. The application shall include:

(a) The name of the applicant and the applicant's authority to make the application;

(b) A statement demonstrating that there is probable cause to believe that a person whose oral communication is to be intercepted is engaged in committing, has committed or is about to commit a particular felony, or a misdemeanor under ORS 167.007 or 167.008, and that intercepting the oral communication will yield evidence thereof; and

(c) The identity of the person, if known, suspected of committing the crime and whose oral communication is to be intercepted.

(4) The judge may require the applicant to furnish further testimony or documentary evidence in support of the application.

(5) Upon examination of the application and evidence, the judge may enter an ex parte order, as requested or as modified, authorizing or approving the interception of an oral communication within the state if the judge determines on the basis of the facts submitted by the applicant that:

(a) There is probable cause to believe that a person is engaged in committing, has committed or is about to commit a particular felony, or a misdemeanor under ORS 167.007 or 167.008; and

(b) There is probable cause to believe that the oral communication to be obtained will contain evidence concerning that crime.

(6) An order authorizing or approving the interception of an oral communication under this section must specify:

(a) The identity of the person, if known, whose oral communication is to be intercepted;

(b) A statement identifying the particular crime to which the oral communication is expected to relate;

(c) The agency authorized under the order to intercept the oral communication;

(d) The name and office of the applicant and the signature and title of the issuing judge;

(e) A period of time after which the order shall expire; and

(f) A statement that the order authorizes only the interception of an oral communication to which a law enforcement officer or a person under the direct supervision of a law enforcement officer is a party.

(7) An order under ORS 133.724 or this section is not required when a law enforcement officer intercepts an oral communication to which the officer or a person under the direct supervision of the officer is a party if the oral communication is made by a person whom the officer has probable cause to believe has committed, is engaged in committing or is about to commit:

(a) A crime punishable as a felony under ORS 475.752, 475.806 to 475.894 [or], 475.906, **475C.005 to 475C.525 or 475C.770 to 475C.919** or as a misdemeanor under ORS 167.007 or 167.008; or

(b) Any other crime punishable as a felony if the circumstances at the time the oral communication is intercepted are of such exigency that it would be unreasonable to obtain a court order under ORS 133.724 or this section.

(8) A law enforcement officer who intercepts an oral communication pursuant to this section may not intentionally fail to record and preserve the oral communication in its entirety. A law enforcement officer, or a person under the direct supervision of the officer, who is authorized under this section to intercept an oral communication is not required to exclude from the interception an oral communication made by a person for whom probable cause does not exist if the officer or the person under the officer's direct supervision is a party to the oral communication.

(9) A law enforcement officer may not divulge the contents of an oral communication intercepted under this section before a preliminary hearing or trial in which an oral communication is going to be introduced as evidence against a person except:

(a) To a superior officer or other official with whom the law enforcement officer is cooperating in the enforcement of the criminal laws of this state or the United States;

(b) To a magistrate;

(c) In a presentation to a federal or state grand jury; or

(d) In compliance with a court order.

(10) A law enforcement officer may intercept an oral communication under this section only when acting within the scope of the officer's employment and as a part of assigned duties.

(11) As used in this section, "law enforcement officer" means:

(a) An officer employed to enforce criminal laws by:

(A) The United States, this state or a municipal government within this state;

(B) A political subdivision, agency, department or bureau of the governments described in subparagraph (A) of this paragraph; or

(C) A police department established by a university under ORS 352.121 or 353.125;

(b) An authorized tribal police officer as defined in ORS 181A.940; or

(c) A regulatory specialist as defined in ORS 471.001.

(12) Violation of subsection (9) of this section is a Class A misdemeanor.

SECTION 6. ORS 165.663 is amended to read:

165.663. Any police officer may apply to the circuit court in which judicial district the targeted telephone is located for an ex parte order or extension of an order authorizing the installation and use of a pen register or a trap and trace device. The application shall:

(1) Be in writing under oath;

(2) Include the identity of the applicant and the identity of the law enforcement agency conducting the investigation;

(3) Contain a statement demonstrating that there is probable cause to believe that an individual is committing, has committed or is about to commit:

(a) A particular felony of murder, kidnapping, arson, robbery, bribery, extortion or other crime dangerous to life and punishable as a felony;

(b) A crime punishable as a felony under ORS 475.752, 475.806 to 475.894 [or], 475.906, **475C.005 to 475C.525 or 475C.770 to 475C.919**;

(c) A crime under ORS 166.720 that includes as part of the pattern of racketeering activity at least one incident of conduct that constitutes a felony; or

(d) Any conspiracy to commit a crime described in paragraphs (a) to (c) of this subsection; and

(4) Contain a statement demonstrating that use of a pen register or trap and trace device will yield evidence relevant to the crime.

SECTION 7. ORS 475C.337 is amended to read:

475C.337. (1) Except for licensees and licensee representatives acting in accordance with ORS 475C.005 to 475C.525 and any rule adopted under ORS 475C.005 to 475C.525, it is unlawful for any person 21 years of age or older to possess, knowingly or intentionally:

(a) An amount of plants in the genus Cannabis within the plant family Cannabaceae in excess of the amount allowed under ORS 475C.305 (1).

(b) More than two ounces of usable marijuana in a public place.

(c) More than eight ounces of usable marijuana.

(d) More than 16 ounces of cannabinoid products in solid form or cannabinoid concentrates.

- (e) More than 72 ounces of cannabinoid products in liquid form.
- (f) More than one ounce of cannabinoid extracts.
- (g) A cannabinoid extract that was not purchased from a marijuana retailer that holds a license issued under ORS 475C.097.

(2) Except as provided in subsection (3) of this section, unlawful possession of a marijuana item is a Class A misdemeanor.

(3) Unlawful possession of a marijuana item is:

(a) A Class B violation, if the amount possessed is not more than two times the applicable maximum amount specified in subsection (1)(a) to (f) of this section.

(b) A Class B misdemeanor, if the amount possessed is more than two times, but not more than four times, the applicable maximum amount specified in subsection (1)(a) to (f) of this section.

(c) A Class C felony, if the amount possessed is:

(A) More than 16 times the applicable maximum amount specified in subsection (1)(a), (c), (d), (e) or (f) of this section;

(B) More than eight pounds of usable marijuana in a public place; or

(C) More than one-quarter ounce of cannabinoid extract that was not purchased from a marijuana retailer that holds a license issued under ORS 475C.097.

(d) A Class B felony, if:

(A) The amount possessed is more than 32 times the applicable maximum amount specified in subsection (1)(a), (c), (d), (e) or (f) of this section; or

(B) The violation is a marijuana offense involving reckless unlawful conduct under ORS 475C.353 (5) or a marijuana offense involving knowing unlawful conduct under ORS 475C.353 (6).

SECTION 8. ORS 475C.341 is amended to read:

475C.341. (1) Except for licensees and licensee representatives acting in accordance with ORS 475C.005 to 475C.525 and any rule adopted under ORS 475C.005 to 475C.525, it is unlawful for any person under 21 years of age to possess, knowingly or intentionally:

(a) An amount of plants in the genus *Cannabis* within the plant family Cannabaceae in excess of the amount allowed under ORS 475C.305 (1).

(b) More than two ounces of usable marijuana in a public place.

(c) More than eight ounces of usable marijuana.

(d) More than 16 ounces of cannabinoid products in solid form or cannabinoid concentrates.

(e) More than 72 ounces of cannabinoid products in liquid form.

(f) More than one ounce of cannabinoid extracts.

(g) A cannabinoid extract that was not purchased from a marijuana retailer that holds a license under ORS 475C.097.

(2) Except as provided in [subsection (3)] **subsections (3) and (4)** of this section, unlawful possession of a marijuana item by a person under 21 years of age is a Class A misdemeanor.

(3) Unlawful possession of a marijuana item by a person under 21 years of age is a Class C felony, if the amount possessed is:

(a) More than 16 times the applicable maximum amount specified in subsection (1)(a), (c), (d), (e) or (f) of this section;

(b) More than eight pounds of usable marijuana in a public place; or

(c) More than one-quarter ounce of cannabinoid extract that was not purchased from a marijuana retailer that holds a license issued under ORS 475C.097.

(4) Unlawful possession of a marijuana item by a person under 21 years of age is a Class B felony, if:

(a) The amount possessed is more than 32 times the applicable maximum amount specified in subsection (1)(a), (c), (d), (e) or (f) of this section; or

(b) The violation is a marijuana offense involving reckless unlawful conduct under ORS 475C.353 (5) or a marijuana offense involving knowing unlawful conduct under ORS 475C.353 (6).

SECTION 9. ORS 475C.349 is amended to read:

475C.349. (1) Except for licensees and licensee representatives acting in accordance with ORS 475C.005 to 475C.525 and any rule adopted under ORS 475C.005 to 475C.525, and except for a person acting within the scope of and in compliance with ORS 475C.305, it is unlawful for any person to manufacture a marijuana item.

(2) Except as provided in subsection (3) of this section, unlawful manufacture of a marijuana item is a Class A misdemeanor.

(3) Unlawful manufacture of a marijuana item is:

(a) A Class B misdemeanor, if a person 21 years of age or older unlawfully manufactures homegrown marijuana at a household and the total number of homegrown plants in the genus Cannabis within the plant family Cannabaceae at the household exceeds four plants but does not exceed eight plants.

(b) A Class C felony, if:

(A) A person unlawfully manufactures marijuana and the total number of plants in the genus Cannabis within the plant family Cannabaceae exceeds 12 plants; or

(B) A person unlawfully manufactures a cannabinoid product or a cannabinoid concentrate and the total amount of cannabinoid products or the total amount of cannabinoid concentrates exceeds twice the applicable maximum amount specified in ORS 475C.337 (1)(d), (e) or (f).

(c) A Class B felony, if:

(A) A person unlawfully manufactures a cannabinoid extract[.];

(B) The violation involves the manufacture of more than 100 marijuana plants, whether mature or immature; or

(C) The violation is a marijuana offense involving reckless unlawful conduct under ORS 475C.353 (5) or a marijuana offense involving knowing unlawful conduct under ORS 475C.353 (6).

SECTION 10. ORS 475C.353 is amended to read:

475C.353. (1) Except as provided in [subsection (3)] **subsections (3), (5) and (6)** of this section, a felony under ORS 475C.337 or 475C.341 shall be classified as crime category 1 of the sentencing guidelines grid of the Oregon Criminal Justice Commission.

(2) Except as provided in [subsection (3)] **subsections (3), (5) and (6)** of this section, a felony under ORS 475C.345 or 475C.349 shall be classified as crime category 4 of the sentencing guidelines grid of the Oregon Criminal Justice Commission.

(3) Subject to subsection (4) of this section, a felony under ORS 475C.337, 475C.341, 475C.345 or 475C.349 shall be classified as crime category 8 of the sentencing guidelines grid of the Oregon Criminal Justice Commission if the violation is a commercial marijuana offense. A violation is a commercial marijuana offense for purposes of this subsection if the violation was [committed in conjunction with] **accompanied by** at least three of the following factors:

(a) The offender delivered a marijuana item for consideration;

(b) The offender was in possession of \$300 or more in cash;

(c) The offender was unlawfully in possession of a firearm or other weapon as described in ORS 166.270 (2), the offender used, attempted to use or threatened to use a deadly weapon or dangerous weapon, as those terms are defined in ORS 161.015, or the offender was in possession of a firearm or other deadly weapon or dangerous weapon for the purpose of using the deadly weapon or dangerous weapon;

(d) The offender was in possession of materials being used for the packaging of marijuana items, such as scales, wrapping or foil, other than a material used to contain the marijuana item that is the subject of the violation;

(e) The offender was in possession of marijuana item transaction records or customer lists;

(f) The offender was in possession of stolen property;

(g) The offender was in possession of manufacturing paraphernalia specifically designed for producing marijuana, such as recipes, precursor chemicals, laboratory equipment, lighting equipment, ventilating equipment or power generation equipment;

(h) The offender modified structures by painting, wiring, plumbing or lighting the structures to facilitate the offense;

(i) The offender used public lands to manufacture the marijuana item; or

(j) The offender constructed fortifications or took security measures that had the potential to injure persons.

(4) To prove that a violation is a commercial marijuana offense for purposes of subsection (3) of this section, the state must plead in the accusatory instrument at least three of the factors described in subsection (3) of this section. The state has the burden of proving each factor beyond a reasonable doubt.

(5) A violation of ORS 475C.337 (3)(d), 475C.341 (4), 475C.349 (3)(c)(B) or 475C.349 (3)(c)(C) shall be classified as a crime category 6 of the sentencing guidelines grid of the Oregon Criminal Justice Commission if the violation constitutes a marijuana offense involving reckless unlawful conduct. A violation of ORS 475C.337 (3)(d), 475C.341 (4), 475C.349 (3)(c)(B) or 475C.349 (3)(c)(C) is a marijuana offense involving reckless unlawful conduct if the person is aware of and consciously disregards a substantial and justifiable risk that the violation is accompanied by:

(a) Any of the following factors:

(A) Abusing or threatening to abuse the law or legal process;

(B) Destroying, concealing, removing, confiscating or possessing an actual or purported passport or immigration document, or other actual or purported government identification document, of another person;

(C) Threatening to report another person to a government agency for the purpose of the other person's arrest or deportation;

(D) Threatening to collect an unlawful debt;

(E) Instilling in another person a fear that the person will withhold from the other person the necessities of life, including but not limited to lodging, food and clothing; or

(F) Withholding wages earned without lawful justification;

(b) The issuance of a citation to a person under ORS 654.071 for a violation of any state occupational safety or health law, regulation, rule or order, including any safety and health standards for agricultural labor housing and related facilities under the Oregon Safe Employment Act; or

(c) Any of the following factors related to the environment:

(A) Discharging, placing or causing to be placed any wastes, as defined in ORS 468B.005, into the waters of this state or in a location where the wastes are likely to escape or be carried into the waters of this state;

(B) The unlawful use, storage, disposal, treatment or transport of hazardous waste, as defined in ORS 466.005;

(C) The unlawful possession, use or application of a pesticide, as defined in ORS 634.006; or

(D) The use of surface water or ground water in violation of ORS chapter 537.

(6) A violation of ORS 475C.337 (3)(d), 475C.341 (4), 475C.349 (3)(c)(B) or 475C.349 (3)(c)(C) shall be classified as a crime category 8 of the sentencing guidelines grid of the Oregon Criminal Justice Commission if the violation constitutes a marijuana offense involving knowing unlawful conduct. A violation of ORS 475C.337 (3)(d), 475C.341 (4), 475C.349 (3)(c)(B) or 475C.349 (3)(c)(C) is a marijuana offense involving knowing unlawful conduct if the person acts with knowledge, or with a conscious purpose to avoid knowledge, that the violation is accompanied by:

(a) Any of the following factors:

(A) Abusing or threatening to abuse the law or legal process;

(B) Destroying, concealing, removing, confiscating or possessing an actual or purported passport or immigration document, or other actual or purported government identification document, of another person;

(C) Threatening to report another person to a government agency for the purpose the other person's arrest or deportation;

(D) Threatening to collect an unlawful debt;

(E) Instilling in another person a fear that the person will withhold from the other person the necessities of life, including but not limited to lodging, food and clothing; or

(F) Withholding wages earned without lawful justification;

(b) The issuance of a citation to a person under ORS 654.071 for a violation of any state occupational safety or health law, regulation, rule or order, including any safety and health standards for agricultural labor housing and related facilities under the Oregon Safe Employment Act; or

(c) Any of the following factors related to the environment:

(A) Discharging, placing or causing to be placed any wastes, as defined in ORS 468B.005, into the waters of this state or in a location where the wastes are likely to escape or be carried into the waters of this state;

(B) The unlawful use, storage, disposal, treatment or transport of hazardous waste, as defined in ORS 466.005;

(C) The unlawful possession, use or application of a pesticide, as defined in ORS 634.006; or

(D) The use of surface water or ground water in violation of ORS chapter 537.

SECTION 11. ORS 536.900, as amended by section 5, chapter 52, Oregon Laws 2022, is amended to read:

536.900. (1) In addition to any other liability or penalty provided by law, the Water Resources Commission may impose a civil penalty on a person for violation of:

(a) A term or condition of a permit, certificate or license issued under ORS chapters 536 to 543A.

(b) ORS 537.130 or 537.535.

(c) ORS 537.545 (5) or a rule described in ORS 537.545 (7).

(d) A commission rule or order that pertains to well maintenance.

(e) ORS 540.045, 540.145, 540.210, 540.310, 540.320, 540.330, 540.340, 540.435, 540.440, 540.570 (5), 540.710, 540.720 and 540.730 or rules adopted under ORS 540.145.

(f) Section 2 or 4 (2), chapter 52, Oregon Laws 2022.

(g) Section 3 of this 2023 Act.

(2) A civil penalty may be imposed under this section for each day of violation of ORS 537.130, 537.535, 540.045, 540.310, 540.330, 540.570 (5), 540.710, 540.720 or 540.730.

(3) In the event the petitioner knowingly misrepresents the map and petition required in ORS 541.329, the commission may assess a penalty of up to \$1,000 based upon guidelines to be established by the commission. In addition, the petition and map shall be amended to correct the error at the petitioner's cost. Affected users shall be given notice as provided in ORS 541.329 (5).

(4) A civil penalty may not be imposed until the commission prescribes a reasonable time to eliminate the violation. The commission shall notify the violator of the time allowed to correct a violation within 10 business days after the commission first becomes aware of the violation.

(5) Notwithstanding any term or condition of a permit, certificate or license, the rotation of the use of water under ORS 540.150 may not be considered a violation under subsection (1) of this section.

(6) The commission may impose a civil penalty of not more than \$2,000 per occurrence for a violation described in subsection (1)(g) of this section.

SECTION 12. ORS 537.990, as amended by section 6, chapter 52, Oregon Laws 2022, is amended to read:

537.990. (1) Violation of ORS 537.130 (2) is a Class B misdemeanor.

(2) Any person who willfully diverts or uses water to the detriment of others without compliance with law shall be punished as provided in subsection (1) of this section. The possession or use of

water, except when a right of use is acquired in accordance with law, shall be prima facie evidence of the guilt of the person using it.

(3) Violation of ORS 537.535 (1) or 537.747 is a Class B misdemeanor.

(4) Violation of section 4 (2), chapter 52, Oregon Laws 2022, or section 3 of this 2023 Act is a Class A misdemeanor.

(5)(a) Violation of section 4 (1), chapter 52, Oregon Laws 2022, with criminal negligence, as defined in ORS 161.085, is a Class A misdemeanor.

(b) Notwithstanding ORS 161.635, the maximum fine for a violation described in this subsection is \$25,000 if the person:

(A) Owns a water hauling business; or

(B) Owns, operates or is responsible for the grow site to which the water was hauled or arranged to be hauled.

(6)(a) Notwithstanding subsections (1) to (3) of this section, violation of ORS 537.130 (2) or 537.535 that concerns the use of water at a grow site for a crop of plants in the plant Cannabis family Cannabaceae is a Class A misdemeanor if:

(A) The grow site is not registered or licensed under ORS 475C.065, 475C.792 or 571.281; and

(B) The crop of plants is in an amount that is not allowed under state law.

(b) Notwithstanding ORS 161.635, the maximum fine for a violation described in this subsection is \$25,000.

SECTION 13. Section 45, chapter 542, Oregon Laws 2021, is amended to read:

Sec. 45. Sections 40 and 41a to 44, chapter 542, Oregon Laws 2021, [of this 2021 Act] are repealed on January 1, 2024.

SECTION 14. Sections 2 and 3 of this 2023 Act and the amendments to ORS 133.619, 133.726, 165.663, 475C.337, 475C.341, 475C.349, 475C.353, 536.900 and 537.990 and section 45, chapter 542, Oregon Laws 2021, by sections 4 to 13 of this 2023 Act apply to conduct occurring on or after the effective date of this 2023 Act.

SECTION 15. This 2023 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2023 Act takes effect on its passage.

Passed by Senate April 10, 2023

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Lori L. Brocker, Secretary of Senate

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Rob Wagner, President of Senate

Passed by House May 31, 2023

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Dan Rayfield, Speaker of House

Received by Governor:

.....M.,....., 2023

Approved:

.....M.,....., 2023

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Tina Kotek, Governor

Filed in Office of Secretary of State:

.....M.,....., 2023

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Secretary of State